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NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			WINSTON III, EDWARD B	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/550,274	OON, YEONG KUANG	
	<b>Examiner</b>	<b>Art Unit</b>	
	EDWARD WINSTON	3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10/09/2009.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) none is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-21 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Response to Amendment***

1. The following Office action in response to communications received October 9, 2009.

Claims 1, 3, 10-13, 15, 19 and 20 have been amended and new claim 21 having been added.

Therefore, claims 1-21 are pending and addressed below.

2. Applicant's amendments to the claims are sufficient to overcome the 35 USC § 101,

Claim Objection and selected 35 USC § 112 rejections set forth in the previous office action

dated June 9, 2009.

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on applications filed in Australia on 11 April 2003, 4 July 2003, and 30 September 2003. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), for the application filed in Australia on 11 April 2003, which papers have been placed of record in the file. It is noted, however, that applicant has not filed a certified copy of the application filed in Australia on 4 July 2003 and application filed in Australia on 30 September 2003 as required by 35 U.S.C. 119(b).

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The recitation of Claim 5 wherein the individual's place of birth is expressed in terms

of tenth-minutes, hundredth-minutes and thousandth-minutes. The recitation of Claim 13 wherein each transaction proposition includes a representation of a further location. The recitation of Claim 17 wherein identifies an individual in a law enforcement context. The recitation of Claim 18 wherein the unique personal identification key identifies a World Wide Web domain name for web services.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2, 3, 8, 10, 11, 13 and 16-18 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- As per Claim 2 the section of the limitation of “previous issue of either parent” is unclear to examiner as to what is attempting to be encompassed by this recitation.  
Appropriate clarification and correction is required.
- As per Claim 8 the section of the limitation of “existence of a previous issue” is unclear to examiner as to what is attempting to be encompassed by this recitation.  
Appropriate clarification and correction is required..
- As per Claim 10 the examiner is not sure if the applicant is claiming some sort of translation device for global messaging purposes. Entire claim is unclear to

examiner as to what is attempting to be encompassed by this recitation.

Appropriate clarification and correction is required..

- As per Claim 11 the section of the limitation of “wherein the unique personal identification key forms the header of each transaction proposition” is unclear to examiner as to what is attempting to be encompassed by this recitation. The examiner does not understand how applicant wants the key to be the header.

Appropriate clarification and correction is required.

- As per Claim 13 the section of the limitation of “wherein each transaction proposition includes a representation of a further location, being the location of the transaction” is unclear to examiner as to what is attempting to be encompassed by this recitation. Appropriate clarification and correction is required.
- As per Claim 16-18 the section of the limitation of the unique personal identification key that identifies a “patient, an individual in a law enforcement context and a world wide web domain name for web services for a global citizen” is unclear to examiner as to what is attempting to be encompassed by this recitation. Appropriate clarification and correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 1-18 rejected under 35 U.S.C. 103 (a) as being unpatentable over Shanahan et al. (US 2003/0033288) in view of Eaton (US 2004/0083226) further in view of Duncan (WO 01/35360)**

#### **Claim 1 –**

As per claim 1 Shanahan et al. teaches a method of uniquely associating transaction data with a particular individual, having the following limitations:

- generating or obtaining transaction data for that individual (Paragraph [0013], Figure 6 Items 612-616; Shanahan et al. definition of the used term entity, Paragraph [0126])

Shanahan does not disclose a method of:

- associating the transaction data with a unique personal identification key of that individual (Page 6 Paragraph [0050] Lines 4-12 of Eaton)
- the key expressed in human readable form and comprising a representation of the individual's first or given name, the individual's father's first or given name, the individual's mother's first or given name, the individual's date of birth (Page 6 Paragraph [0052] Figures 3A-4 of Eaton)

- the individual's gender (Page 3, A. Horoscope Profile subsection 1. Line 8 and 16 of Duncan)
- the individual's place of birth expressed in longitude and latitude (Page 3 Horoscope Profile of Duncan)

It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include a method to include a server that uses the unique identifier to gather or retrieve the personal information for that individual from the database and transmit the personal information to the client (unique personal identification key Figures 3A-4) as taught by Eaton. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this way since many different organizations and people have maintained records which may contain information of interest and the development of computers has allowed information in general to be more easily obtained and distributed (Paragraph [0006] of Eaton)

It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include a method to include the individual's gender and place of birth expressed in longitude and latitude as taught by Duncan. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this way since gender and birthplace are important factors in gathering an individual's personal data for record.

## **Claim 2 –**

Shanahan does not disclose a method wherein the unique personal identification key further comprises the first or given name of previous issue of either parent. Eaton teaches wherein the unique personal identification key further comprises the first or given name of previous issue of either parent. It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include nodes 306 and 307 correspond to individuals in the second generation 324 and are representative of the parents of the individual represented by node 320 (Page 4 Paragraph [0038] Lines 10-13 Figures 3A-4 of Eaton) as taught by Eaton. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this way since frequently, people are searching for identifying information about their family such as names, dates and places of birth and death and the like, but some people are interested in discovering other types of information as well such as

religious information, health information and the like (Page 1 Paragraph [0005] of Eaton)

**CLAIM 3 –**

Shanahan et al. further disclose(s) a method having the limitations of:

- wherein the method includes the step of transforming the human readable form of the key into a non-human readable (Page8 Paragraph [0185] Lines 8-11 Figure 6 Items 612-616 of Shanahan)

**Claim 4 –**

Shanahan does not disclose a method wherein the individual's place of birth is expressed in terms of degrees and minutes. Duncan teaches wherein the individual's place of birth is expressed in terms of degrees and minutes . It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include the individual's place of birth is expressed in terms of degrees and minutes as taught by Duncan (Page 3 Horoscope Profile; Page 16 Section 18.3 of Duncan). One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this way since degrees and minutes are necessary to get an accurate position of a specific location.

The Examiner notes that Degrees, Minutes, Seconds and Decimal Degrees, Latitude/Longitude can be converted from one to the other. All forms of coordinate notations are capable of representing the same amount of data and the same precision, whether indicated in Latitude/Longitude, Degrees, Minutes, Seconds, Decimal Degrees, etc. Therefore, depending on which type of coordinate notation provided, one may have to do some conversion to result in a different coordinate notation. Thus, Latitude/Longitude, Degrees, Minutes, Seconds, Decimal

Degrees, etc. are equivalents resulting in the same information, i.e. “place of birth”.

**Claim 5 –**

Shanahan does not disclose a method wherein the individual's place of birth is expressed in terms of degrees, minutes, tenth-minutes, hundredth-minutes and thousandth-minutes. It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include the individual's place of birth is expressed in terms of degrees and minutes as taught by Duncan (Page 3 Horoscope Profile; Page 16 Section 18.3 of Duncan). One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this way since degrees and minutes are necessary to get and accurate position of a specific location.

The Examiner notes that Degrees, Minutes, Seconds and Decimal Degrees, Latitude/Longitude can be converted from one to the other. All forms of coordinate notations are capable of representing the same amount of data and the same precision, whether indicated in Latitude/Longitude, Degrees, Minutes, Seconds, Decimal Degrees, etc. Therefore, depending on which type of coordinate notation provided, one may have to do some conversion to result in a different coordinate notation. Thus, Latitude/Longitude, Degrees, Minutes, Seconds, Decimal Degrees, etc. are equivalents resulting in the same information, i.e. “place of birth”.

**CLAIM 6 –**

Shanahan et al. further disclose(s) a method having the limitations of:

- wherein the association of the data transaction with a unique personal identification key, or the association of disparate data transactions each associated with non-identical keys, includes the step of evoking an indication of a degree of match, being a probability of

correctness of match (Page 25 paragraph [390] Lines 4-13 of Shanahan)

**CLAIM 7 –**

Shanahan et al. further disclose(s) a method of claim 6 having the limitations of:

- wherein, in the event of a non-perfect match of a particular key or keys, a candidate list of likely keys is evoked, each candidate associated with a probability or ranking (comparing) to indicate a degree of match (Page 1 Paragraph [0013] Lines 13-17 of Shanahan)

**CLAIM 8 –**

Shanahan et al. further disclose(s) a method of claim 6 having the limitations of:

- wherein the degree of match is generated in accordance with an algorithm biasing the probability of match in favor of characteristics selected from the group (category) of gender, date of birth, place of birth and existence of a previous issue (Page 25 Paragraph [0390]; Paragraph [0393] Lines 8-10 of Shanahan)

Examiner interprets that Shanahan teaches that each group/category (i.e. gender, date of birth, place of birth and existence of a previous issue) will be separated by modules.

**CLAIM 9 –**

Shanahan et al. further disclose(s) a method having the limitations of:

- wherein the transaction data is expressed in a machine parsable scripting language (Page 21 Paragraph [0328] Lines 11-14 of Shanahan)

**CLAIM 10 –**

Shanahan et al. further disclose(s) a method of claim 9 having the limitations of:

- the machine parseable scripting language having an organized and classified vocabulary of terms which derive from a natural human language to facilitate ease of comprehension by humans, the language based upon the use of expressions containing said terms and representing items of information, wherein said expressions selectively include contextual code components to provide a context of an item of information, the contextual code components comprising terms from said vocabulary, each term able to embody both an intrinsic meaning and a place value significance, the place value significance augmenting the meaning of the resultant expression depending on the positional relationship of the term to a contextual code component, so to provide a transaction proposition applicable to global messaging. (Page 18 Paragraph [0293] Figure 26 of Shanahan)

**CLAIM 11 –**

Shanahan et al. further disclose(s) a method of claim 9 having the limitations of:

wherein the unique personal identification key forms the header of each transaction proposition (Page 8 Paragraph [0185] Lines 3-4 of Shanahan)

**CLAIM 12 –**

Shanahan et al. further disclose(s) a method of claim 9 having the limitations of:

- wherein each transaction proposition comprises an English text component for direct human apprehension, and a coded component for direct computer input.  
(Page 8 Paragraph [0185] Lines 4-5 of Shanahan)

**Claim 13 –**

Shanahan does not disclose a method wherein each transaction proposition includes a representation of a further location, being the location of the transaction. Eaton teaches wherein each transaction proposition includes a representation of a further location, being the location of the transaction. It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include nodes 306 and 307 correspond to individuals in the second generation 324 and are representative of the parents of the individual represented by node 320 (Page 4 Paragraph [0038] Lines 10-13 Figures 3A-4 of Eaton) as taught by Eaton. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this way since frequently, people are searching for identifying information about their family such as names, dates and places of birth and death and the like, but some people are interested in discovering other types of information as well such as religious information, health information and the like (Page 1 Paragraph [0005] of Eaton)

**CLAIM 14 –**

Shanahan et al. further disclose(s) a method of having the limitations of:

- wherein the unique personal identification key or the transaction proposition further comprises a representation of altitude of location of place of birth or of the location of the transaction (Page 7 Paragraph [0174] Lines 5-7; Page 8 Paragraph [0185] Lines 5-8 {i.e. The transaction proposition of the location of transaction can be obtained from fax #} of Shanahan)

**CLAIM 15 –**

Shanahan et al. further disclose(s) a method of claim 9 having the limitations of:

- for global messaging (Item 1020) of transaction data, including the step of constructing a message block (Item 1018) from a series of transaction propositions held headed by a single unique personal identification key (Figure 10; Item 1020 Global Service Results/Global messaging; Item 1018 Transaction data and message block; Items 1014 and 1026 series of transaction propositions; Item 1016 single unique identification key (file))

**Claim 16 –**

Shanahan does not disclose a method of:

- wherein the transaction data is patient healthcare data, and the unique personal identification key identifies a patient (Page 6 Paragraph [0052] Figures 3A-4 of Eaton)

It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include a server that uses the unique identifier to gather or retrieve the personal information for that individual from the database and transmit the personal information to the client/(unique personal identification key Figures 3A-4) (Page 6 Paragraph [0052] Figures 3A-4 of Eaton) as taught by Eaton. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this way since many different organizations and people have maintained records which may contain information of interest and the development of computers has allowed information in general to be more easily obtained and distributed (Paragraph [0006] of Eaton)

It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include a method to include the individual's gender and place of birth expressed in longitude and latitude as taught by Duncan. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this

way since gender and birthplace are important factors in gathering an individual's personal data for record (Page 3, A. Horoscope Profile subsection 1. Line 8 and 16 of Duncan).

Examiner interprets some information included in healthcare data as name, date of birth, gender and family history including mother and fathers name as taught by Duncan and Eaton. Examiner also interprets a patient being any individual seeking service.

**Claim 17 –**

Shanahan does not disclose a method

- wherein the unique personal identification key identifies an individual in a law enforcement context (Page 6 Paragraph [0052] Figures 3A-4 of Eaton)

It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include a method to include a server that uses the unique identifier to gather or retrieve the personal information for that individual from the database and transmit the personal information to the client (unique personal identification key Figures 3A-4) as taught by Eaton. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this way since many different organizations and people have maintained records which may contain information of interest and the development of computers has allowed information in general to be more easily obtained and distributed (Paragraph [0006] of Eaton)

**CLAIM 18 –**

Shanahan r et al. further disclose(s) a method of claim 1 having the limitations of:

- wherein the unique personal identification key identifies a world wide web domain name for web services for a global citizen (Figure 10 Items 1012 and 1020 of Shanahan)

Claim 19-21 rejected under 35 U.S.C. 103 (a) as being unpatentable over Shanahan et al. (US 2003/0033288) in view of Eaton (US 2004/0083226) further in view of Duncan (WO 01/35360)

**Claim 19 –**

As per claim 19 Shanahan et al. teaches a computer-based messaging system for communicating data relating to particular individuals, having the following limitations:

- messages in a format of one or more blocks of data expressed in a machine parsable scripting language (Page 28 Paragraph [0428] Lines 1-4)

Shanahan does not disclose a system of:

- a unique personal identification key for said particular individual (Figure 3A-4 of Eaton)
- key comprising a representation of a combination of the individual's first or given name, the individual's father's first or given name, the individual's mother's first or given name, the individual's date of birth (Page 6 Paragraph [0052] Figures 3A-4 of Eaton)
- the individual's gender (Page 3, A. Horoscope Profile subsection 1. Line 8 and 16 of Duncan)
- the individual's place of birth expressed in longitude and latitude (Page 3 Horoscope Profile of Duncan)

It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include a method to include a server that uses the unique identifier to gather or retrieve the personal information for that individual from the database and transmit the personal information to the client (unique personal identification key Figures 3A-4) as taught by Eaton. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this way since many different organizations and people have maintained records which may contain information of interest and the development

of computers has allowed information in general to be more easily obtained and distributed  
(Paragraph [0006] of Eaton)

It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include a method to include the individual's gender and place of birth expressed in longitude and latitude as taught by Duncan. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this way since gender and birthplace are important factors in gathering an individual's personal data for record.

**Claim 20 –**

Shanahan does not disclose a method wherein the unique personal identification key further comprises a representation of the first or given name of previous issue of either parent. It would have been obvious to one of ordinary skill in the art at the time of the invention to expand the method of Shanahan to include nodes 306 and 307 correspond to individuals in the second generation 324 and are representative of the parents of the individual represented by node 320 (Page 4 Paragraph [0038] Lines 10-13 Figures 3A-4 of Eaton) as taught by Eaton. One of ordinary skill in the art at the time of the invention would have been motivated to expand the method of Shanahan in this way since frequently, people are searching for identifying information about their family such as names, dates and places of birth and death and the like, but some people are interested in discovering other types of information as well such as religious information, health information and the like (Page 1 Paragraph [0005])

**Claim 21 –**

Shanahan r et al. further discloses a method of claim 3 further comprising:

- the further retransformation of the non-human readable form of the key back into human readable form. (Page8 Paragraph [0185] Lines 8-11 Figure 6 Items 612-616 of Shanahan)

### ***Response to Arguments***

Applicant's arguments filed October 9, 2009 have been fully considered but they are not persuasive. In the remarks applicant argues (1) Shanahan does not teach a method or system which enables association of records with to a unique individual, and does not even contemplate the use of unique keys to identify individuals (2) Eaton does use an individual identifier within the system (associated with a node) to locate data relating to the relevant individual. Eaton does not teach or in any way suggest a method of uniquely identifying individuals, nor a method or system for associating records with uniquely identified individuals (3) There is no teaching or suggestion that this concept can be used to uniquely identify an individual, nor to associate records such as medical records (or law enforcement records) to a unique individual. Moreover, Duncan does not teach the expression of the key as required by independent claims 1 and 19.

Since arguments were not directed to a particular claim, Examiner answered arguments in the manner which received in each paragraph of remarks titled by prior art Inventor and publication number.

In response to argument (1), Examiner respectfully disagrees. Applicant states that Shanahan does not teach a method or system which enables association of records with to a unique individual, and does not even contemplate the use of unique keys to identify individuals. However, Examiner indicated that Eaton taught that limitation on Page 6 Paragraph 0050.

In response to argument (2), Examiner respectfully disagrees. Paragraph 0025 of Eaton states, the genealogical information associated with a pedigree chart can be voluminous and may require a significant amount of time to retrieve from a database. The present invention provides

a data structure that comprises a plurality of nodes that are related by the same family relationships that identify an individual. The data structure does not contain any genealogical data, but serves to establish a pedigree chart that can be visually presented to a user and each person represented in the data structure is uniquely identified by an identifier that is used to retrieve the personal information of the identified individual from the database.

In response to argument (3), Examiner respectfully agrees. Examiner used and stated the prior art of Duncan to teach a method to include the individual's gender and place of birth expressed in longitude and latitude, individual's place of birth is expressed in terms of degrees and minutes and wherein the individual's place of birth is expressed in terms of degrees, minutes, tenth-minutes, hundredth-minutes and thousandth-minutes. Therefore, Examiner did not use the prior art of Duncan to teach or suggest that this concept can be used to uniquely identify an individual, nor to associate records such as medical records (or law enforcement records) to a unique individual

In response to applicant's arguments 1-3, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Shanahan et al. in view of Eaton further in view of Duncan does not expressly teach the specific data recited in claims 1-21. These differences are only found in the non-functional descriptive material and are not functionally involved in the manipulative steps of the invention nor do they alter the recited structural elements; therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The manipulative steps of the invention would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability as the claimed invention fails to present a new and unobvious functional relationship between the descriptive material and the substrate, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)); *In re Ngai*, 367 F.3d 1336, 1336, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004); MPEP § 2106.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EDWARD WINSTON whose telephone number is (571) 270-7780. The examiner can normally be reached on MONDAY-THURDAY; 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry O'Connor can be reached on (571) 272-6787. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or (571) 272-1000.

/E. W./  
Examiner, Art Unit 3686  
5 February 2010

/Gerald J. O'Connor/  
Supervisory Patent Examiner  
Group Art Unit 3686